*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+Crl.P.No.1920 of 2003

% 23-2-2010

Naresh Singh Thakur
s/o.Sankar Singh .. Petitioner

and

$ The State of A.P.
Represented by Public Prosecutor,
High Court of A.P.
Hyderabad .. Respondent

<GIST:

<HEAD NOTE:

! Counsel for petitioner : Sri C.Praveen Kumar

^ Counsel for respondent : Additional Public Prosecutor

? CASES REFERRED :

2003(1) ALD (Criminal) 568

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Between :

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ORDER:

1. This Criminal Revision Case is filed by the unsuccessful accused in Crl.A.No.220/2002 on the file of Additional Metropolitan Sessions Judge, Hyderabad. The petitioner/accused was convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.50,000/- for the offence punishable under Section 63 of Copy Right Act (in short hereinafter referred to as "Act" for the purpose of convenience) r/w. 51 of the said Act, in default of payment of the said fine, the accused to undergo simple imprisonment for one month. The accused also was further convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.5000/- for the offence punishable under Section 68-A of the Act, in default of the payment of the said fine, the accused shall undergo simple imprisonment for one month and the above sentences were directed to run concurrently. Being aggrieved by the same, made by the learned V Metropolitan Magistrate, Hyderabad in C.C.No.615/2001, the accused had carried the matter by way of appeal in Crl.A.No.220/2002 on the file of the Court of Additional Metropolitan Sessions Judge, Hyderabad and the learned appellate Court confirmed the findings of the learned Metropolitan Magistrate aforesaid and dismissed the Appeal. Aggrieved by the same, to the present Criminal Revision Case had been preferred by the petitioner/accused.

2. While admitting the matter on 26-12-2003, this Court granted interim suspension of sentence in Crl.M.P.No.9002/2003 and also further directed the release of the accused on bail.

3. Sri C.Praveen Kumar, the learned Counsel representing the petitioner had taken this Court through Sections 63, 51 and 68-A of the Act and would maintain that the prosecution miserably failed to establish the ingredients of the said provisions. The learned Counsel also would maintain that the testimony of PW-1 and PW-2 being discrepant and further these witnesses being interested witnesses, on the strength of the evidence of these witnesses, the petitioner/accused could not have been convicted. The learned Counsel also would further maintain that PW-3 was declared hostile and in the absence of any acceptable evidence in this regard, it cannot be said that the prosecution was able to establish the seizure. When that being so, the findings recorded by the Courts below cannot be sustained. The learned Counsel also while further elaborating his submissions would maintain that there is absolutely no proof to show that the petitioner is the owner of the premises wherefrom M.Os.1 to 3 had been seized. Further, the learned Counsel also would maintain that PW-2 was not authorized by Indian Music Industry to conduct survey and detect variations and infringements. The learned Counsel also would maintain that the statement made during the examination under Section 313 Cr.P.C. cannot be used as against the petitioner/accused. At any rate, since the very nexus which ought to have been established by the prosecution had not been established, the findings recorded by both the Courts below being unsustainable, the Criminal Revision Case to be allowed by recording acquittal.

4. On the contrary, the learned Additional Public Prosecutor had taken this Court through the findings recorded by the learned Metropolitan Magistrate, Hyderabad in C.C.No.615/2001 and the learned Additional Metropolitan Sessions Judge, Hyderabad in Crl.A.No.220/2002 and would maintain that in the light of the concurrent and convincing findings which had been recorded by both the courts below, this is not a fit matter to be interfered with in a Revision. The learned Additional Public Prosecutor also

would maintain that the evidence of PW-2 is clear and categorical and apart from the evidence of PW-2, the evidence of PW-1 and PW-4 also is available on record. The mere fact that PW-3 was declared hostile, that itself cannot be a ground to record acquittal for the reason that convincing reasons had been recorded by both the Courts below and strong reliance was placed on the evidence of PW-1 in this regard. The learned Additional Public Prosecutor also would contend that inasmuch as the search and seizure had been well established and since the ingredients of the provisions of the Act with which the petitioner/accused had been charged had been established, the Criminal Revision Case to be dismissed. The learned Additional Public Prosecutor also relied on certain decisions to substantiate his submissions in this regard.

5. Heard the Counsel and perused the records.

6. The facts in brief are as hereunder:-

The Indian Music Industry is a registered society. It consists of 52 to 60 music composers or authorized persons to record the audio film cassettes having valid copy rights. In order to detect the infringement and piracy of copy rights over the audio and video cassettes, the Indian Music Industry has got its own machinery. Sri Syed Gulam Ghouse (PW-2) is said to be the Senior Investigator in the Indian Music Industry. He has been authorized to conduct surveys to detect the infringement and indulgence of copy rights. PW-2, during the course of survey on 7-4-2001 had been to Chintal Basti area and visited the shop i.e., Umesh Music Centre and found the accused while indulging in sale, possession and recording of audio cassettes of the companies of the Indian Music Industry without having any copy right or authorization or licence to do the same. Then he went to the Additional Deputy Commissioner of Police, Task Force, West and South Zones, Hyderabad and lodged Ex.P-4 complaint. Basing on the said complaint, the Additional Deputy Commissioner of Police had entrusted the matter to PW-1. Sri M.Adi Murthy, S.I. of Police, Task Force, West Zone,

Hyderabad to enquire into it. On that PW-1 has summoned two panch witnesses viz., Mohd. Yousuf (PW-3) and LW-3 Manick Rao. He briefed the contents of the complaint to them. He swung into action along with PW-2 by issuing search proceedings. He proceeded to the shop bearing H.No.10-1-681/4, Chintal Basti, Hyderabad. He had conducted the raid at about 6.30 p.m. in the presence of panchas LW-3 Manick Rao and PW-3 Mohd.Yousuf. They found the accused namely Naresh Singh Thakur while conducting the business. The purpose of visit had been explained to the accused. A search was conducted and they found audio cassettes of different companies in one room in the said premises. The pirated audio cassettes pertaining to the Indian Music Industry had been identified by PW-1 with the help of PW-2. PW-1 seized 219 pirated audio cassettes from the said shop in the presence of the accused, panch witnesses LW-3 Manick Rao, PW-3 Mohd.Yousuf and PW-2 under a cover of Ex.P-3 seizure panchanama dated 7-4-2001. MO-1 is 196 pirated audio cassettes found in the name of Indian Music Industry group of companies. He had also seized MO-2 pirated audio cassettes numbering into 23 pertaining to non-Indian Music Industry group of companies and MO-3 two decks make of Telex company. After seizure of MOs.1 to 3 PW-1 had laid a report Ex.P-1 dated 7-4-2001 before the then S.I. of Police, Saidabad and he had also handed over the accused along with the seized property and material papers. Basing on Ex.P-1 report, the S.I. of Police G.Sudershan (PW-4) registered a case and issued F.I.R., Ex.P-12 on 7-4-2001. PW-4 took up investigation fro PW-1 and examined PWs.1 and 2 and recorded their statements. He had deposited the original cassette along with inlay box which is marked as MO-4. After completion of the investigation he had filed the charge sheet against the accused before XV M.M., Hyderabad.

7. To prove its case, the prosecution examined PW-1 to PW-4. PW-1 is Sri M.Adi Murthy who was the then S.I. of Police, Task Force, West Zone who swung into action on the basis of the complaint Ex.P-4 lodged by

PW-2. PW-2 is Syed Gulam Ghouse, the senior investigator working for Indian Music Industry who visited the shop of the accused on 7-4-2001 and found that there was sale and possession of pirated cassette. PW-3 is Mohd.Yousuf, panch witness for the seizure of M.Os.1 to 3 from the shop of the accused under the cover of Ex.P-3 seizure panchanama, PW-4 is Sri M.Nathanial, Investigating Officer, who investigated into the case and filed charge sheet after completion of the investigation.

8. Ex.P-1 to P-12 were marked and M.Os.1 to 4 also had been marked. The appellate court had formulated the following Points for consideration at para-6 :

(i) Whether the accused/appellant was the proprietor of Umesh Music Centre, Chintal Basthi, Hyderabad or he has any nexus with the said music centre ?

(ii) Whether the accused/appellant was having any valid licence or any authority under the Copy Right Act to possess or to sell the audio cassettes in the above said premises ?

(iii) Whether the audio cassettes seized in M.Os.1 and 2 are pirated one and they do not disclose the name, address of the person who had made to record, name and address of the copy right in such work and the year of first packing etc., facts ?

(iv) Whether the seizure of M.Os. 1 to 4 from the premises of Umesh Music Centre at Chintal Basti, Hyderabad is true ?

(v) Whether there are any grounds to interfere with the findings of the trial Court and the accused/appellant is entitled for acquittal ?

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9. The appellate court further had referred to the representing provisions of the Act and further recorded reasons in dl and ultimately came to the conclusion that the learned Metropolitan Sessions Judge, Hyderabad had recorded elaborate and convincing reasons while convicting and sentencing the petitioner/accused and hence there is no reason to interfere with such findings and accordingly dismissed the Appeal. No doubt, elaborate submissions had been made by the learned Counsel representing the petitioner that though a suggestion was put to PW-1 relating to the ownership of the shop as such and though no ingredients as

such had been established by examining at least the landlord or the person running the shop, in the absence of such material having been placed before the courts, the courts below are not justified in inferring such ingredients and convicting the petitioner/accused on such insufficient material. Incidentally, yet another submission in elaboration had been made that PW-3, the only Panch witness who was examined, such witness having been declared as hostile when no acceptable evidence is placed in relation to the seizure, it should have been held that the prosecution miserably failed to establish the guilt of the accused and should be recorded acquittal.

10. In **Gali Hanook Vs. State of A.P.** [1] the learned Judge of this Court at para-13 observed :

> "The circumstantial evidence being relied upon in this regard by the prosecution is in the nature of seizure of theft property. It may be mentioned at the outset that the property produced before the Court and marked as MOs. 1 to 605 is obviously the theft property, since there has been no gainsaying of the same. Further more it is nobody's case that it is stage managed by P. Ws. 1, 2 and 7 and created an episode of day light robbery in the Bank. Well, when there is no denial of the incident of day light robbery in the Bank and when there is no denial that MOs. 1 to 605 are the jewellery and the cash pertaining to the bank coupled with the evidence of P. W. 27 who recovered these properties on the spot from two places, there can be no hesitation to conclude that MOs. I to 605 constitute the theft property undoubtedly. It is therefore to be seen whether this property has been recovered as propounded by the prosecution from A-1 and A-2. The evidence of P. Ws. 19 and 20 is germane in this context to be considered. Both of them are the police officers and their evidence is obviously that they could apprehend A-1 and A-2 on two different places although some lapse seems to have been pointed out in the cross-examination of these two witnesses with reference to the relevant police orders. As a whole their testimony has not been shaken. Their admission clearly brings home to the factum of apprehension of A-1 and A-2. Both the scooters were recovered from the place at which they had fallen along with the properties. The evidence of P. W. 27, the

Investigating Officer who effected the seizure and recovery cannot be eschewed from consideration for the mere reason that the mediators PWs. 21 and 22 and 24, have not supported the case of the prosecution. There is no law which says that the evidence of the police officers cannot be accepted in the absence of the corroborative evidence of the mediators in whose presence the seizure and recovery are said to have been effected. On the other hand, P. W. 27 being the police officer can be presumed to have discharged his official duties in regular course as can be seen from Illustration (e) to Section 114 of the Indian Evidence Act. The IO can at best be termed as an interested witness and therefore it becomes necessary for the Court to appreciate the evidence of the IO or the police officer, like any other interested witness by approaching his testimony with the necessary circumspection. Nothing has been elicited in the cross-examination of p. W. 27 so as to discredit his testimony. The seizure and recovery in this case are so soon after the incident of day light robbery in the Bank."

11. Further reliance was placed on **State Government of NCT of Delhi Vs. Sunil** [2].

12. The relevant provisions – Sections 51, 63, 68-A of the Act also had been referred to. The evidence of PW-1 and PW-2 had been relied upon and convincing reasons had been recorded that the seizure as relied on by the prosecution to be taken as established even if the evidence of PW-3 to be ignored since PW-3 had been declared as hostile. The evidence of PW-4 also is available on record. It is no doubt true that it was recorded that no suggestion was given either to PW-1 or PW-2 that the said shop belongs to the brother of the accused. It is also true that at the stage of examination under Section 313 Cr.P.C., the accused made a statement to the effect that the said shop belongs to his brother. It is no doubt pointed out specifically that a suggestion was put to PW-1 in this regard and since the ingredients to be established by the prosecution in this regard having not been established, benefit of doubt to be given to the petitioner/accused. A stray suggestion in this regard may not alter the situation especially in the light of the convincing reasons recorded by both that the Metropolitan

Magistrate and also the learned Additional Metropolitan Sessions Judge, Hyderabad. The evidence of PW-1, PW-2 and PW-4 had been appreciated in elaboration. No doubt the fact that PW-3 was declared hostile also had been taken note of. Exs.P-1 to P-12 and M.Os.1 to 4 also had been appreciated. Ex.P-1 is the report of PW-1 before the P.S, Ex.P-2 is the search proceedings, Ex.P-3 is confessional statement-cum-seizure panchanama, Ex.P-4 is the complaint given by Gulam Ghouse (PW-2), Ex.P-5 is notarised xerox copy of Power of Attorney along with list of members in Indian Music Industry, Ex.P-6 is the certificate of training showing imparting of training, Ex.P-7 is the agreement notarised dated 20-9-2000, Ex.P-8 is the certificate of Registrar of Society, Ex.P-9 is changing of name from Indian Phonografic Industry into Indian Music Industry, Ex.P3(a) is panchanama, Exs.P-10 and 11 are signatures of PW-3 on the search proceedings and panchanama, Ex.P-12 is the F.I.R. in Cr.No.228/2001. M.O.1 is 196 cassettes being pirated in the name of Indian Music Industry Group of Companies, MO-2 is 23 cassettes pirated pertaining to non-IMI Group of Companies, MO-3 is two decks make of Telex company and MO-4 is original cassette along with inlay card box.

13. It is no doubt true that the landlord of the premises had not been examined, but however on the material available on record the evidence of PW-1 and PW-2, findings had been recorded by both the courts below in detail. These are well considered findings recorded by both the court of first instance and also the appellate court on appreciation of the evidence. The relevant provisions of the Act also had been taken into consideration by both the courts below. The only question which had been argued in elaboration is in relation to PW-3 having been declared hostile. In the light of the decisions relied on by the learned Additional Public Prosecutor supra, especially in the light of the convincing reasons recorded by both the Courts below on appreciation of evidence of PW-1 and PW-2 as well, the findings recorded by both the Courts below cannot be found fault. But however, as

already aforesaid, relating to the person running the shop whether the petitioner/accused was actually running the shop or his brother, there appears to be some controversy. Be that as it may, whether by virtue of such infringement any gain had been obtained by the petitioner/accused as such or not, it being doubtful, without expressing any further opinion, this Court is inclined to modify the sentence and reduce the same for a period of one month. It is stated that already the petitioner had undergone imprisonment for some period. It is needless to say that apart from the sentence which had been already served, the rest of the sentence to be served by the petitioner.

14. Accordingly, the Criminal Revision Case is partly allowed to the extent indicated above.

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Justice P.S.Narayana

Date : 23-2-2010

L.R. copy to be marked : YES / NO

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[1] **2003(1) ALD (Crl) 568**

[2] **2001(1) SCC 652**